

Council

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Constitutional Issues – Planning Committee

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Summary

Following consideration and recommendation to Council by the Planning Committee on 13 March 2024, this report seeks approval to (a) amend the scheme of delegation in relation to the referral of planning applications to the Planning Committee and (b) amend the Planning Code of Good Practice, in relation to the role of ward Councilors addressing the Committee.

1. Recommendations

- 1.1. Council is recommended to approve the changes to the Employee Delegation Scheme, as set out in Appendix 1 to the report.
- 1.2. Council is recommended to approve the changes to the Planning Code of Good Practice, as set out in Appendix 2 to the report.

2. Budget and policy framework

- 2.1. The Monitoring Officer has an obligation to monitor and keep the Constitution under review.
- 2.2. Under Section 101 of the Local Government Act 1972, the Council has delegated authority to the Planning Committee to determine all planning applications as set out in the Committee's terms of reference. The Committee may, in turn, arrange for any of its functions to be discharged by a Sub Committee or officer.
- 2.3. Both the Employee Scheme of Delegation and the Planning Code of Good Practice form part of the Council's Constitution, therefore, changes to these documents will require Full Council approval.

3. Background

- 3.1. The Employee Scheme of Delegation forms part of the Constitution and specifies those functions for which officers have delegated authority. In the case of planning applications, these were last reviewed during the Covid pandemic. In April 2020, the Planning Committee agreed to temporarily amend the scheme which had the effect of reducing the number of planning applications which needed to be considered and determined by the Planning Committee, with those decisions made by the Planning officers instead. In practice this meant a draft Committee agenda was prepared in line with previous scheme of delegation and the Chairperson and Planning Spokespersons went through that with the Chief Planning Officer and agreed which applications needed to stay on the Committee agenda and which could be determined by officers. This meant that the Committee focused on only the most significant or controversial applications during the COVID-19 pandemic. In May 2021, the Committee considered a further report on whether to make these changes on a permanent basis, however, no decision was made to do so at that stage.
- 3.2. The proposed changes to the Employee Scheme of Delegation will allow the Committee to focus on significant and controversial applications thereby allowing applications that are straight forward or technical in nature to be considered and determined by officers under delegated authority, these are summarised below and specified as tracked changes at Appendix A to the report.
- 3.3. With significant changes to legislation over the last 14 years, particularly with respect to permitted development rights and prior approvals, many of which are time limited in terms of decision making and which are technical matters in decision making rather than planning balance, it seems appropriate to remove these from Committee consideration along with other similar technical matters.
- 3.4. In relation to planning applications, following initial discussions with the previous Planning Committee Chairperson, Vice Chairperson and Opposition Spokesperson, informal consultation with Planning Committee members and then formal consideration by the Planning Committee on 13 March 2024, it is recommended to increase the number of letters from separate households that would trigger referral from 3 to 5, and to retain the existing delegation which enables the Chief Planning Officer, having consulted the Chairperson, Vice Chairperson and Opposition Spokesperson to agree that “other” applications (e.g. householder applications, change of use (no operational development) etc) be determined under delegated powers regardless of the number of representations reflecting their limited impact.
- 3.5. A letter from the Parish Council or a residents group expressing a view contrary to the officer recommendation will remain as requiring Committee determination, on the basis that the Parish Council and residents’ groups represent more than 5 residents, but with the addition that a Parish Council

can object but also agree the application remain to be determined under delegated powers due to its limited impact.

- 3.6. Amendments to the scheme are recommended in relation to tree related applications, which reflect the above and provide more clarity on what proposals can be determined under delegated powers.
- 3.7. With regards to the current rules regarding the role of ward councillors addressing the Committee, the current rules date back to a period where there was only one ward represented by a single Councillor. Under the new boundary arrangements adopted for the May 2023 local elections, there are now three wards which are represented by a single Councillor. Therefore, the previous Chairperson of the Planning Committee, in liaison with officers, reviewed these rules and informally consulted with Planning Committee members on the proposals set out below, prior to the Committee's formal consideration of the proposed changes on 13 March 2024.
- 3.8. Members will be aware that the current rules stipulate that Ward Councillors can only speak on an individual planning application/enforcement matter once unless it is a new application or unless the application has changed.
- 3.9. A small number of planning applications come twice to Committee, usually following the agreement of the Committee to defer the application. This type of deferral can happen after a Ward Member has addressed the Committee. In the case of single Councillor wards, the Committee has previously informally agreed to the Councillor to speak again (i.e. twice). It is now proposed that this is formalised in the Planning Code of Good Practice to remove the need for informal agreements.
- 3.10. Separately, the Planning Code of Good Practice states that "...if the application is deferred, the Ward Councillor will not be permitted to address the Committee again on the same application when the application is re-submitted for consideration unless it is a new application or unless the application has changed". It is considered that this is too wide in scope as an application may only be subject to very minor changes, e.g. In a recent application on the peninsula a Ward Councillor had spoken on an application, which then returned to committee with a reduced number of units and therefore did not raise any new issues for the ward Councillor to speak on. Under the current rules this would allow a Ward Councillor to speak again.
- 3.11. Therefore, it is proposed that the rule is changed so that that a Member can speak for a further time if the legal advisor to the Committee is of the opinion that the application has varied to the point that it should be considered as a new application or that it should be considered that the application has significantly changed. This is specified as a tracked change at Appendix B to the report.

4. Options

- 4.1. Option 1 – to make no changes to the Employee Scheme of Delegation and the Planning Code of Good Practice.
- 4.2. Option 2 – to recommend changes to the Employee Scheme of Delegation and the Planning Code of Good Practice to Full Council approval. This is the recommended option.

5. Advice and analysis

- 5.1. Option 2 is the recommended option because it is important to review and update the individual sections of the Constitution on a regular basis to ensure that it reflects the Council's current arrangements, e.g. three single Councillor wards as well making the best use of Committee time, e.g. spending more time considering and determining significant or controversial applications and leaving those more straightforward applications to officers to deal with. Applications that are reported to Committee cost significantly more to process in terms of officer time, while it is important to make the most of Committee time to focus on applications that require their attention rather than considering very lengthy agendas with items that will have limited impact.
- 5.2. The Committee is also advised that the Councillor Conduct Committee considered a report on 21 February 2024 setting out details of the Monitoring Officer's forthcoming review of the ethical framework, which will include a review of the Planning Code of Good Practice. The Monitoring Officer is aware of this specific issue (single Councillor wards) already being considered by the Planning Committee.

6. Planning Committee – 13 March 2024

- 6.1. Discussion: the Committee received a report updating the Scheme of Delegation in relation to the referral of planning applications to the Planning Committee. The report also set out some proposals in relation to the role of Ward Councillors addressing the Committee.
- 6.2. The Chief Planning Officer explained that he sought the Planning Committee's views on changes to the Employee Scheme of Delegation and the Planning Code of Good Practice and, if approved, a report would be submitted to Full Council in April 2024. He went through the amendments as set out in pages 49 – 59 in the agenda which included:
 - Officers, under delegated authority, would be able to determine all application which were straight forward or technical in nature.
 - To increase the number of relevant letters (from separate households) of representation, that would trigger a referral, from 3 to 5.
 - Where the applicant was the Council, and the proposed development was contrary to Local Planning Policy, the decision should be made by the Planning Committee.

- Where one letter of representation was received from a Parish Council (which would normally trigger a referral) the Parish Council would also need to confirm if they wanted the application referred to Committee for determination.
- Officers to determine certain applications in regard to trees.

6.3. Further amendments were:

- Ward Councillors to register their wish to speak at the Planning Committee meeting by 5.15pm on the day of the Committee.
- A Ward Councillor would only be permitted to address the Planning Committee once on an individual planning application, with the exception of a single Member Ward, who would be permitted to address the Planning Committee twice on an individual planning application.
- If an application was deferred, the Ward Councillor would not be permitted to address the Committee again on the same application, unless the Committee received legal advice that it was a new application, or the application had significantly changed.
- Ward Councillors would be allowed to speak on a planning application for up to 5 minutes.

6.4. Committee Members then raised a number of questions and comments, which included:

6.4.1. A Parish Council may submit a representation, however, it may be a minor matter and the Parish Council would be satisfied that the planning application could be determined under delegated powers. If the Parish Council determined that the planning application need to be considered by the Planning Committee, they would inform the Chief Planning Officer.

6.4.2. The Chief Planning Officer explained that “relevant letters” meant those that raised planning issues and not just comments relating to things like loss of property value or loss of view both of which were not planning matters.

6.4.3. The Chief Planning Officer clarified that Ward Councillors could request, in writing with reasons, for any planning application to be referred to a Planning Committee meeting for consideration. Where a Member “called in” a planning application, Members commented they would appreciate them attending the meeting to speak as a Ward Councillor to explain their reasons why they called it in.

6.5. The Committee recommended the changes to the Employee Delegation Scheme, as set out in Appendix 1 to the report, to Full Council for approval.

6.6. The Committee also recommended the changes to the Planning Codes of Good Practice, as set out in Appendix 2, to the report, to Full Council for approval.

7. Director's comments

- 7.1. The Planning Committee discussed the proposals in detail and made a number of helpful comments and raised some queries, which the Chief Planning Officer responded to at the meeting. These are clearly set out in section 6 of this report.
- 7.2. Following the Planning Committee meeting on 13 March, a further review of the proposed changes to the Employee Scheme of Delegation has resulted in the need to further amend section 8.1 (vi) of the scheme so that the bracketed section which refers to amenity societies refers to four, rather than two, letters from separate households, to be consistent with the increase in the number of relevant letters needed to trigger referral (i.e. the increase from 3-5) This additional proposed change has been shared with the new Chairperson and new Vice-Chairperson and opposition spokespersons of the Planning Committee who are supportive.

8. Risk management

- 8.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Constitution is fit for purpose	It is important to ensure that the Constitution is fit for purpose, in the case of the Planning Committee, this will ensure that it operates effectively and efficiently.	Ensure that the individual sections of the Constitution is reviewed on a regular basis.	DIII

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

9. Consultation

- 9.1. Informal consultation on the proposals in this report was undertaken with Planning Committee members, prior to formal consideration by the Planning Committee on 13 March 2024.

10. Climate change implications

10.1. The Council declared a climate change emergency in April 2019 - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.

10.2. There are no direct climate change implications arising from this report.

11. Financial implications

11.1 There are no direct financial implications arising from this report.

12. Legal implications

12.1. The determination of planning applications is a non-executive function of the Council. Section 101 of the Local Government Act 1972 provides for the Council to arrange for the determination of planning applications by a Committee, a Sub Committee or an officer and for a Committee to delegate its functions to a Sub Committee or an officer.

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Appendices

Appendix A – Employee Delegation Scheme (extract)

Appendix B – Planning Code of Good Practice (extract)

Background papers

None